

# STATE OF COLORADO

Bill Ritter, Jr., Governor  
James B. Martin, Executive Director

Dedicated to protecting and improving the health and environment of the people of Colorado

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Colorado Department  
of Public Health  
and Environment

October 6, 2008

**Certified Mail Number: 7007 0220 0001 0156 8564**

PWSID# CO-0210014

Kermitts Roadhouse Inc. and Diane L. Rohr Anthony  
Attention: Diane L. Rohr Anthony  
29784 Paint Brush Dr.  
Evergreen, CO 80439-8556

**RE: Service of Drinking Water Enforcement Order, Number: DT-081006-1**

Dear Ms. Anthony:

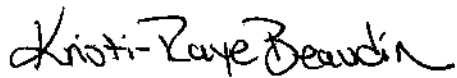
You are hereby issued the enclosed Enforcement Order (the "Order"). This Order is issued by the Colorado Department of Public Health and Environment, Water Quality Control Division (the "Department") pursuant to the authority given to the Department by §25-1.5-203 of the Colorado Revised Statutes ("C.R.S."). The Department bases this Order upon findings that you have violated the *Colorado Primary Drinking Water Regulations* (the "Regulations") as described in the enclosed Order.

As a recipient of an enforcement order you may request a formal hearing to contest the Order in accordance with the Regulations, 5 CCR 1003-1, §1.6.7(g). Requests for such a hearing must be filed in writing with the Department within thirty (30) calendar days after service of the Order. Hearings on enforcement orders shall be held in accordance with applicable provisions of the State Administrative Procedure Act, §§24-4-101 through 24-4-108, C.R.S.

This action could result in the imposition of administrative or civil penalties. The Department or a State District Court is authorized pursuant to §25-1-114.1, C.R.S. to impose a penalty of up to \$1,000 per violation per day. Please be advised that the Department is continuing its investigation into this matter and the Department may identify supplementary violations that warrant amendments to this Order or the issuance of additional enforcement actions.

Should you desire to informally discuss this matter with the Department or if you have any questions regarding the Order, please don't hesitate to contact Cathy Heald at (303) 692-3254 or by electronic mail at [catherine.heald@state.co.us](mailto:catherine.heald@state.co.us).

Sincerely,



Kristi-Raye Beaudin, Legal Assistant  
Compliance Assurance and Data Management Section  
WATER QUALITY CONTROL DIVISION

Enclosure

- cc: Clear Creek County Environmental Health Department  
Compliance Monitor / Drinking Water File  
Jack E. Barker, System Operator ([aaaoper8@aol.com](mailto:aaaoper8@aol.com))
- ec: Doug Camrud, Engineering Section, CDPHE  
Tom Armitage, Engineering Section, CDPHE  
Dick Parachini, Watershed Program, CDPHE  
Betsy Beaver, Facility Operators Program, CDPHE  
Shawn McCaffrey, EPA Region VIII  
Paul Klug, Consumer Protection Division, CDPHE  
Carolyn Schachterle, OPA



**COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT**  
**WATER QUALITY CONTROL DIVISION**

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**ENFORCEMENT ORDER**

**NUMBER: DT-081006-1**

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**IN THE MATTER OF: KERMITTS ROADHOUSE INC.**

**DIANE L. ROHR ANTHONY**

**PUBLIC WATER SYSTEM IDENTIFICATION NUMBER: CO-0210014**

**CLEAR CREEK COUNTY, COLORADO**

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Pursuant to the authority vested in the Colorado Department of Public Health and Environment (the "Department") by §25-1-109 and §25-1.5-203 of the Colorado Revised Statutes ("C.R.S."), which authority has been delegated to the Department's Water Quality Control Division (the "Division"), the Division hereby makes the following findings and issues the following Enforcement Order:

**GENERAL FINDINGS**

1. Kermitts Roadhouse Inc. and Diane L. Rohr Anthony ("Ms. Anthony") owns and/or operates a drinking water system known as Kermitts located at or near 33295 Hwy 6, Idaho Springs, Clear Creek County, Colorado (the "System").
2. Kermitts Roadhouse Inc. and Ms. Anthony are persons as defined by 5 CCR 1003-1, §1.5.2(98).
3. Kermitts Roadhouse Inc. and Ms. Anthony are a supplier of water within the meaning of §25-1.5-201(2), C.R.S. and its implementing regulation, 5 CCR 1003-1, §1.5.2(128).
4. The System is a public water system as defined by §25-1.5-201(1), C.R.S. and its implementing regulation, 5 CCR 1003-1, §1.5.2(107).
5. The Public Water System Identification Number ("PWSID"), assigned to the System by the Division is PWSID # CO-0210014.
6. Pursuant to 5 CCR 1003-1, §1.2, the System is subject to the *Colorado Primary Drinking Water Regulations* (the "Regulations"), which were adopted pursuant to §25-1.5-203, C.R.S.
7. Kermitts Roadhouse Inc. and Ms. Anthony provide piped water for human consumption from the System to at least twenty-five (25) people, but the System does not serve twenty-five (25) or more of the same persons over six months per year. The System is therefore classified as a "transient, non-community water system" as defined by 5 CCR 1003-1, §1.5.2(137).

8. The System's source of water is groundwater under the direct influence of surface water (GWUDI) as defined by 5 CCR 1003-1, §1.5.2(65). Pursuant to 5 CCR 1003-1, §1.5.2(129), groundwaters found to be under the direct influence of surface water will be classified as surface water.

**First Violation**  
**(Failure to Provide Treatment of a Public Water Supply)**

9. Pursuant to 5 CCR 1003-1, §7.1.3(b), a public water system that uses a surface water source or a groundwater source under the direct influence of surface water and serves fewer than 10,000 people must provide treatment consisting of both disinfection, as specified in 5 CCR 1003-1, §7.1.2, and filtration treatment which complies with the requirements of 5 CCR 1003-1, §§7.1.3(f) or (g) or §§7.3.4(a), (b) or (c).
10. Pursuant to 5 CCR 1003-1, §7.1.3(d), once a groundwater source has been determined, through the results of a microscopic particulate analysis, visual well inspection or correlation of source water parameters with surface conditions, to be under the direct influence of surface water, the system must install filtration treatment designed to meet the turbidity requirements specified in 5 CCR 1003-1, §§7.1.3(e), (f), (g) or (h), 5 CCR 1003-1, §§ 7.2.3(a), (b) or (c), or 5 CCR 1003-1, §§7.3.4(a), (b), or (c) within 18 months of written notice from the Department.
11. In a letter dated November 28, 2006, the Division notified the System that its source water well (ID #: WL001) was being reclassified as groundwater under the direct influence of surface water. In the letter the System was further advised, by no later than April 30, 2008 (18 month deadline), to either abandon the source and connect to another approved water system, develop another source that is free of surface water influence, make improvements to the source, or install Division approved surface water treatment.
12. In a letter dated December 27, 2006 from AAA Operations, Inc. (contract operator for the System) to the Division, the System acknowledged the source water reclassification and advised the Division that the System was exploring options of drilling a new well or installing surface water treatment to rectify the new classification of the System's source water.
13. Division records to-date establish that the System has not properly responded to and complied with the requirements of groundwater under the direct influence of surface water classification of the System's water source.
14. Kermitts Roadhouse Inc.'s and Ms. Anthony's ongoing failure to provide approved disinfection and filtration treatment on the System's classified groundwater under the direct influence of surface water source constitutes ongoing violation(s) of 5 CCR 1003-1, §7.1.3.

**COMPLIANCE ORDER**

Based upon the foregoing factual and legal determinations and pursuant to 5 CCR 1003-1, §1.6.7, Kermitts Roadhouse Inc. and Ms. Anthony are hereby ordered to:

15. Immediately comply with the *Colorado Primary Drinking Water Regulations*, 5 CCR 1003-1, Articles 1 through 12.

Further, the Division hereby orders Kermitts Roadhouse Inc. and Ms. Anthony to comply with the following specific terms and conditions of this Order.

16. In order to ensure long-term compliance with the surface water treatment requirements for public water supplies, Kermitts Roadhouse Inc. and Ms. Anthony shall evaluate and upgrade, as needed, the System's water sources and/or treatment processes in accordance with the following schedule:
  - a. By October 30, 2008, retain a qualified individual (experienced in drinking water systems) to evaluate and recommend water treatment technologies or alternate water sources to ensure compliance with the surface water treatment requirements of 5 CCR 1003-1, Article 7.
  - b. By December 31, 2008, submit Design Plans and Specifications for System improvements for Department review and approval in accordance with the State of Colorado Design Criteria for Potable Water Systems.

*(see <http://www.cdphe.state.co.us/wq/drinkingwater/newsystems.html>)*

- i. If an alternate water source is proposed, submit for Department review and comment detailed engineering plans and specifications for the source including a description of the alternate water source along with a copy of the laboratory analyses supporting that the alternate water source is suitable.
- ii. The Design Plans and Specifications must clearly identify the specific treatment technology Kermitts Roadhouse Inc. and Ms. Anthony will use to ensure compliance with the surface water treatment requirements.
- iii. The Design Plans and Specifications must include a process flow schematic of the distribution system from wellheads to points of use, including flow rates, treatment facilities, storage tanks and all service connections supplied by the wells. Alternative treatment locations for the selected treatment process or processes must be evaluated with a recommended location selection. The process flow schematic information and evaluation must be included to ensure all water from the System is treated.
- iv. The Design Plans and Specifications must include a proposal for management of residuals from the treatment technology selected.
- v. The Design Plans and Specifications submittal package must include design calculations showing the proposed treatment system is properly sized and chlorine contact times can be met for expected flow rates.

*{Please note that, prior to construction, the Department must give final approval to any modifications to the System's water source or treatment process.}*

- vi. The Design Plans and Specifications submittal package must include specifications for treatment equipment and/or chemical additives that come in contact with the water that indicate NSF/ANSI standards 60 and 61 are met.

- c. By April 30, 2009, complete construction/implementation of the Department approved system improvements to ensure long-term compliance with the surface water treatment requirements of 5 CCR 1003-1, Article 7.
17. Kermitts Roadhouse Inc. and Ms. Anthony shall submit "System Improvement Project - Progress Reports" to the Division every sixty (60) calendar days. The first report shall be submitted to the Division within twenty (20) calendar days after receipt of this Order. At a minimum, each report shall clearly indicate the status of the system evaluation/improvement project at the time the report is filed and outline activities to be undertaken within the next sixty (60) calendar days.
18. Kermitts Roadhouse Inc. and Ms. Anthony shall ensure that the public notice requirements of 5 CCR 1003-1, §9.2 are fulfilled for any subsequent violation of 5 CCR 1003-1, Article 7. Within ten (10) calendar days of completion of any required public notification, Kermitts Roadhouse Inc. and Ms. Anthony shall submit to the Department, along with the mandatory certification, a representative copy of each type of notice distributed, published, posted, and/or made available to the persons served by the system and/or to the media.

*Additional guidance for proper public notification can be viewed at the following Internet location:  
[http://www.cdphe.state.co.us/wq/drinkingwater/pdf/PublicNotice/PN\\_Guidance\\_Mar2003.pdf](http://www.cdphe.state.co.us/wq/drinkingwater/pdf/PublicNotice/PN_Guidance_Mar2003.pdf)*

### **NOTICES AND SUBMITTALS**

For all documents, plans, records, reports and replies required to be submitted by this order, Kermitts Roadhouse Inc. and Ms. Anthony shall submit an original and one copy (electronic is preferred) to the Division at the following address:

Colorado Department of Public Health and Environment  
Water Quality Control Division / WQCD-WQP-B2  
Compliance Assurance and Data Management Section / Enforcement Team  
Attention: Catherine Heald  
4300 Cherry Creek Drive South  
Denver, Colorado 80246-1530  
[catherine.heald@state.co.us](mailto:catherine.heald@state.co.us)

Pursuant to 5 CCR 1003-1, §1.6.4(e), all reports, notices, summaries, and certifications required to be submitted to the Department by the public water system must bear the original signature of the owner or the owner's authorized representative.

### **NOTICE OF COMPLETION**

Kermitts Roadhouse Inc. and Ms. Anthony shall submit a Notice of Completion to the Division upon satisfactory completion of all requirements of this Enforcement Order. The Division shall either accept or reject the Notice of Completion in writing. If the Division rejects the Notice of Completion, it shall include in its notice a statement identifying the requirements that the Division considers incomplete or not satisfactorily performed and a schedule for completion. If Kermitts Roadhouse Inc. and Ms. Anthony wish to dispute the

Division's rejection of its Notice of Completion, it shall, within fifteen (15) calendar days of receipt of the Division's rejection, submit a written statement as to its belief of full compliance, addressing in detail all concerns the Division raised in the rejection letter to the System's Notice of Completion.

### **PRIOR APPROVAL REQUIRED**

Pursuant to 5 CCR 1003-1, §1.11.2, no person shall commence construction of any new waterworks, or make improvements to or modify the treatment process of an existing waterworks, or initiate use of a new source, until plans and specifications for such construction, improvements, modifications or use have been submitted to, and approved by the Department. The Department shall grant such approval when it finds that the proposed facilities are capable of complying, on a continuous basis, with all applicable laws, standards, rules and regulations.

### **POTENTIAL ADMINISTRATIVE/CIVIL AND CRIMINAL PENALTIES**

You are also advised, pursuant to §25-1-114.1, C.R.S., that violators of the Regulations or final Enforcement Orders issued by the Department are subject to civil or administrative penalties of up to one thousand dollars (\$1,000) per violation per day, to be imposed by the Department or a State District Court. Further, pursuant to §25-1-114(4), C.R.S., any person, association, or corporation, or the officers thereof, who violates, disobeys, or disregards any provision of the Regulations or an Enforcement Order is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars (\$1,000), or by imprisonment in the county jail for not more than one (1) year, or by both such fine and imprisonment and, in addition to such fine and imprisonment, shall be liable for any expense incurred by health authorities in removing any nuisance, source of filth, or cause of sickness. By virtue of issuing this Enforcement Order, the Department has not waived its right to bring an action for administrative, civil or criminal penalties and may bring such action in the future.

### **REQUEST FOR HEARING OR APPEAL**

You are further advised, pursuant to 5 CCR 1003-1, §1.6.7(g), that a recipient of an Enforcement Order may request a hearing contesting such order. Requests for such a hearing shall be filed in writing with the Department within thirty (30) calendar days after service of the order. Such requests shall state the grounds upon which the order is contested and state the amount of time the recipient estimates will be required for the hearing. Hearings on Enforcement Orders shall be held in accordance with applicable provisions of the State Administrative Procedure Act, Article 4 of Title 24, C.R.S.

Alternatively (or additionally), under section 25-1-113(1), C.R.S., you may file a request for judicial review in the State district court in the county in which you reside or in the city and county of Denver within ninety (90) calendar days of your receipt of this Enforcement Order.

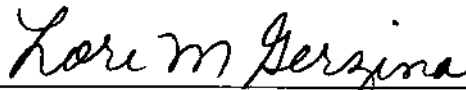
### **ADDITIONAL ACTION**

You are further advised that under §25-1-114.1(1), C.R.S., the Department may institute a civil action against any person who violates a final Enforcement Order of the Department issued for violation of any minimum general sanitary standard or regulation adopted pursuant to §25-1.5-203, C.R.S.

Additionally, the Department may request the Attorney General to seek a temporary restraining order or permanent injunction to prevent or abate any violation of a minimum general sanitary standard or regulation adopted pursuant to §25-1.5-203, C.R.S. Further information concerning the aforementioned action is contained in §25-1-114.1(3), C.R.S.

Issued at Denver, Colorado, this 6<sup>th</sup> day of October, 2008.

**FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT**



Lori M. Gerzina, Section Manager  
Compliance Assurance and Data Management Section  
Water Quality Control Division